

IN THE MATTER OF	:	BEFORE THE
J & T SEAFOOD, INC.	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA 06-024N

.....

DECISION AND ORDER

On August 7, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of J&T Seafood, Inc., Petitioner, for the enlargement of a nonconforming use for a restaurant, carryout and beverage establishment with package goods sales located in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District, filed pursuant to Section 129 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

MacKenzie A. Kantruss, Esquire, represented the Petitioner. Tim Foltz testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 401 Woodbine Road (Maryland Route 94), is located in the 4th Election District at the southwest corner of the intersection of Woodbine Road

and Newport/Woodbine Morgan Road in Woodbine (the “Property”). The Property is identified on Tax Map 3, Grid 13 as Parcel 23, Lots 16 and 17.

The Property is an irregular-shaped parcel consisting of about 1.12 acres. The lot has about 267 feet of frontage on Woodbine Road 192 feet along Newport Road. The south lot line of the Property is about 161 feet deep.

The Property is improved with a one-story, 800-square foot restaurant/carryout/beverage establishment building facing Woodbine Road. This building is situated about 39 feet from the Woodbine Road frontage. Attached to the south end of the building is a 75-square foot freezer unit. About 10 feet to the south of this building is a detached 198 square foot one-story building that houses a kitchen. A small shed adjoins the south side of the kitchen building. A wood privacy fence extends from the front side of the freezer and in front of the kitchen building. These improvements are situated about 140 feet from the south lot line.

Gravel, unmarked parking areas are located in front of the restaurant and to the south of the kitchen building. Access to the site is directly from Woodbine Road; no driveways are demarcated.

The remainder of the Property is unimproved as it rises steeply behind the buildings.

2. The Property is the site of a restaurant/carryout and beverage establishment with package good sales that was confirmed by the Board of Appeals as a nonconforming use under BA Case No. 98-02 in 1998.

3. The Petitioner seeks to enlarge the nonconforming use by erecting a 648 square foot canopy roof contiguous to the south side of the restaurant building and covering over top of the kitchen and freezer area. The purpose of the roof is to provide safe access to the kitchen and freezer

area during inclement weather. The roof will be supported on columns and will be slightly higher than the existing roof on the restaurant building. The existing fence will remain. The roof is depicted on Exhibit 2.

4. All vicinal properties are also zoned RC-DEO. To the north across Newport Road/Morgan Woodbine Road is the Patapsco River. The property to the east across Woodbine Road is another nonconforming use restaurant, the Woodbine Inn. To the south and west are lots improved with single-family detached dwellings that are well separated from the buildings on the site.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. Extension, Enlargement or Alteration of Nonconforming Uses (Section 129.E).

A. The Petitioner proposes to enlarge¹ the nonconforming restaurant/carryout/beverage establishment use by erecting a 648 square foot canopy roof that will cover over top of the kitchen and freezer area. The roof will provide safe access to the kitchen and freezer area for restaurant employees during inclement weather. No change or addition to the activities taking place in connection with the nonconforming use is proposed. Consequently, the addition of the roof will not change the use in any substantial way, in accordance with Section 129.E.1.a.

¹An “enlargement” of a nonconforming use is the increase in size of any structure containing the nonconforming use, the construction of an additional structure on the same lot, or an increase in the land area occupied by the nonconforming use. Section 129.A. The proposed canopy roof would therefore be considered an enlargement.

B. No additional floor area will be added to the existing nonconforming use. Even if the 648 square foot canopy roof is considered, it is about 81% of the gross floor area of the restaurant building alone, and about 60% of the 1,073 square foot gross floor area of the existing restaurant, freezer, and kitchen building combined, which is less than the maximum increase of 100% of the gross floor area allowed by Section 129.E.1.b.

C. The outdoor land area occupied by the nonconforming use will not be enlarged in compliance with Section 129.E.1.c.

D. The roof will be not cause a violation of the bulk regulations for the RC zone in compliance with Section 129.E.1.d.

E. The proposed canopy roof will be constructed over the existing improvements and will be well separated from vicinal properties. No additional activities, noise, or lighting are proposed. Consequently, the proposed enlargement will not cause adverse effects on vicinal properties in accordance with Section 129.E.1.e.

ORDER

Based upon the foregoing, it is this **5th day of September 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of J&T Seafood, Inc., for the enlargement of a nonconforming use for a restaurant, carryout and beverage establishment with package goods sales located in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District is hereby **GRANTED**;

Provided, however, that the nonconforming use and enlargement will apply only to the land area, uses and structures as described in the petition submitted and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.